

Hiawatha National Forest



SPECIAL USES PROPOSAL, APPLICATION AND AUTHORIZATION PROCESS

With very few exceptions, all uses on National Forest System lands (NFS) involving extended occupancy, improvements, conducting any business activity or the use of resources are designated "special uses" and must be authorized by the District Ranger for the administrative unit upon which the use is anticipated. If the request encompasses more than one District, the use may require authorization by the Forest Supervisor. Written special use authorizations document the authority for use of NFS lands for a wide variety of purposes including facilities and services necessary for public health, welfare, safety and convenience. Special use authorizations are also issued to approve commercial activities, recreational events, certain types of filming or still photography and uses of a private nature. Title 36, Code of Federal Regulations, Subpart B contain the principal rules for screening special use proposals, filing and processing special use applications, and preparing written authorizations.

Requests for authorizations to occupy and/or use NFS and related waters that are initiated by entities other than the Forest Service are referred to as **unsolicited proposals**. The person or persons making a proposal are referred to as the **proponent**. The Forest Service is required to conduct an initial and a second-level screening process established in 36 CFR 251.54(e) before accepting a proposal as a formal **special use application**. A decision in favor of a proposed use generally results in a **Special Use Authorization** being issued in the form of a permit, easement or lease to the proponent. Unless specifically prohibited, individuals, business entities, corporations, partnerships, associations, municipalities, or agencies of local, State, or Federal governments may hold a Special Use Authorization.

Requirements for a Proposal to be Accepted as an Application

Any proposal is subject to the following conditions before being fully considered or accepted:

1. The proposal **must pass the nine criteria** in the initial screening process to be considered for further screening.
2. Preference in processing applications and issuing authorizations is given to **uses that offer public services and benefits** over private uses.
3. **Special application procedures may apply** to a particular land use, activity or administrative unit.
4. Any **application that is accepted for a commercial use or activity must involve a competitive interest determination** and, if any competitive interest is expressed, the Forest Service is required to issue a prospectus along with a solicitation for bids to conduct the commercial use. The time necessary to prepare a prospectus depends upon the complexity, intensity and location(s) of the activity being proposed, the staff time available, as well as other priorities the Forest may have at the time. This can be a lengthy and time consuming process and the entity submitting the original proposal is in no way guaranteed of being the one selected for an authorization.

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The proponent should arrange to meet with appropriate personnel from the Forest Service administrative office responsible for managing the affected land as early as possible for pre-proposal discussions. This meeting should occur before submitting a proposal in order to discuss the nature of the proposal and obtain information regarding the guidelines the agency would use to evaluate the specific type of proposal. Typical terms and conditions that would be required for an authorization can also be discussed at this time.

At this stage it may not be necessary for the proponent to supply the Forest Service with detailed information and studies, or even a written proposal. Conceptual proposals may be sufficient for the Forest Service to determine if the proposed use is consistent with existing laws, regulations, the applicable Forest land and resource management plan and any other requirements (36 CFR 251.54(e)(1)). The Forest Service may also be able to determine the likelihood that a commercial proposal would generate a competitive interest. Discussing a possible proposal early-on can help to prevent a proponent from incurring unnecessary expenditure of time and money and can help the proponent determine if the proposal is really something they wish to pursue.

Initial Screening of a Proposal

Proposals submitted orally or in writing are initially screened to determine if they qualify for further consideration according to the nine criteria listed below:

1. It is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands (including policy in FSM 2703.1 and 2703.2); other applicable Federal laws; and applicable State and local laws.
2. It is consistent or can be made consistent with standards and guidelines in the applicable Forest land and resource management plan prepared under the National Forest Management Act and 36 CFR 219.
3. It will not create a serious and substantial risk to public health or safety.
4. It will not create an exclusive or perpetual right of use or occupancy.
5. It will not unreasonably conflict or interfere with administrative uses of the Forest Service or with other scheduled or authorized existing uses on or adjacent to National Forest System lands.
6. It does not involve a proponent with an outstanding debt owed to the Forest Service under terms and conditions of a prior or existing authorization.
7. It does not involve gambling or sexually oriented commercial services.
8. It does not involve military or paramilitary training or exercises by private organizations or individuals.
9. It does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

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If the proposal fails to meet any of these requirements the proposal will be denied without further consideration.

If a proposal passes the initial screening, the Forest Service must determine if the proposal meets a set of second-level screening criteria. A proposal that passes the initial screening outlined above proceeds to second-level screening. Any proposal for a commercial activity that might generate a competitive interest is processed in accordance with procedures for proposals with competitive interests as outlined in the Forest Service Manuals & Handbooks.

The Forest Service will notify a proponent whose proposal passes initial screening that the proposal is subject to second-level screening. At this stage the Forest Service will:

- a. Provide the proponent guidance and the information necessary to proceed with the approval process, including information concerning potential land use conflicts, processing timeframes, environmental and management concerns, administrative fees, anticipated land use rental, and approvals that must be obtained from other Federal, State, or local agencies; and
- b. Identify whether on-the-ground investigations that may require a temporary use permit are necessary to consider the proposal; and
- c. Discuss the kind of authorization (temporary permit, permit, term permit, lease, or easement) and the general terms and conditions (such as tenure, insurance requirements, bonding, and so forth) that may be applicable to the proposed use; and
- d. State that the proponent is responsible for providing studies or other documentation needed by the authorized officer to complete the environmental analysis process and is also responsible for costs incurred in obtaining that information.

Second-Level Screening of a Proposal

To ensure a thorough second-level screening, a proposal must provide sufficient information about a project or activity to enable the authorized officer to determine its feasibility, location, public benefits, and other factors. The proposal must describe the proposed use in sufficient detail to determine:

1. The proposed use is consistent and compatible with the purposes for which the lands are managed and with other uses;
2. The proposed use is in the public interest;
3. The reasons for selection of the location of the proposed use and, in particular, why use of National Forest System lands is necessary and why lands under other ownership cannot be used;
4. Whether the request is based solely on affording the proponent with a lower cost or less restrictive location than can be obtained on non-Federal lands;

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5. Any technical and financial capability requirements for development or operation of the project and whether the proposed project is economically feasible;
6. Whether the proposed use is economically feasible. Applicants may be required to furnish a business plan, including an income and expense worksheet, demonstrating the viability of the proposed use.

Additional information which may be required includes the following:

1. Other Federal, State, and private lands affected by the proposed use and any other agencies that have licensing or regulatory authority over the proposed use;
2. The resources affected, anticipated improvements, and method of operation when construction is complete;
3. Construction phases and their estimated starting and completion dates.

The Forest Service shall deny any proposal that fails to meet the second-level screening criteria and will return the proposal to the proponent with a written explanation of the denial. The Forest Service may reconsider proposals denied after second-level screening when the deficiencies identified in the screening process have been corrected to the satisfaction of the authorized officer. Denial of unsolicited proposals is not subject to administrative appeal under 36 CFR part 215 or part 251, subpart C, and does not constitute a proposed action pursuant to 36 CFR 251.54(e)(6) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347).

If the second-level screening criteria are met, the Forest Service will notify the proponent that the agency is prepared to accept a written formal application for further evaluation. As appropriate, the Forest Service will provide the proponent with additional guidance and information at this time, including identification of the agency's procedures for processing the application and estimated time requirements.

Proposal Meeting All Screening Criteria

When an unsolicited proposal meets all screening criteria it is accepted as a formal application and is considered a **proposed action** that must be analyzed for its site-specific environmental and social effects in accordance with requirements contained in the National Environmental Policy Act of 1969 (NEPA), its implementing regulations and agency NEPA procedures (FSM 1950, FSH 1909.15). **The proponent will become subject to non-refundable Cost Recovery fees at this time, regardless of whether or not a proposed activity is ultimately authorized.**

A 2006 federal regulation authorizes the Forest Service to assess and collect fees to recover the agency's full costs associated with Special Use applications. These regulations are commonly referred to as "**Cost Recovery**" (CR). CR fees include costs to conduct work associated with analyzing and processing proposals and for any monitoring of construction or reconstruction activities authorized by a Special Use Authorization. CR regulations stipulate that a proponent

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is subject to non-fundable CR fees as soon as the Forest Service formally accepts a special uses application. CR fees can become very expensive for a proponent depending upon the complexity of the proposal and are separate from any fees charged for the use and occupancy of NFS lands.

In addition to Cost Recovery fees, a proponent may be responsible for providing information and reports necessary to determine the feasibility and environmental impacts of their proposal; compliance with applicable laws and regulations; and terms and conditions to be included in the authorization. Subsequent to the NEPA process a decision is made concerning whether or not to authorize the use and under what conditions it will be authorized.

Once a special use authorization is issued the holder is typically required to pay a **Land Use Fee** for the authorized activity. The Land Use Fee is an annual rental fee based on the fair market value for the uses authorized or calculated as a percentage of the gross revenues of a business operation and is payable in advance.

Additional information can be found on the Forest Service's Internet site at:

<http://www.fs.fed.us/specialuses/>

All proposals should be made through the specific Administrative Unit upon which the activity is proposed.

Hiawatha National Forest Administrative Units:

Munising Ranger District	- (906) 387-2512
Rapid River/Manistique Ranger District	- (906) 474-6442
Sault Ste. Marie and St. Ignace Ranger Districts	- (906) 428-5200

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